1903
MAY 21.
CRIMINAL REVISION.
30 C. 721=7 C. W. N. 706.

RAMPINI AND HANDLEY, JJ. These are two Rules obtained on behalf of Mr. W. R. Fink, Receiver of the estate of one Haji Cassim Ariff, deceased, calling upon the Municipal Magistrate to show cause why the fines imposed on him under sections 320 and 574 of the Municipal Act should not be set aside.

The fines were imposed on him for not taking steps to close certain service privies and to make certain structural alterations in certain premises under his control as Receiver.

It is contended that the conviction of the appellant is bad, (i) because the appellant is not the "owner" of the premises; (ii) because the sanction of the Court had not been obtained to his prosecution; (iii) because the Receiver had not under his order of appointment the power to incur the expenditure required to carry out the orders of the Corporation; and (iv) because the appellant was doing all he could to obtain funds from the Court to enable him to comply with the notices.

We think the Rules must be made absolute on these grounds. Mr. Fink as Receiver is not the owner of the premises within the definition of the terms as contained in the Municipal Act. He [724] may be receiving rent for the premises, but he does not receive it "on his own account or as agent or trustee for any person or society or for any religious or charitable purpose." He receives the rent as an officer of this Court and as manager of the property on its behalf.

Then, in the case of *Dunne* v. *Kumar Chandra Kishore* (1) and others, it has been decided that a Receiver cannot be made a party to any suit or proceeding without the leave of the Court appointing him.

Finally, on the merits we have satisfied ourselves by examining Mr. Fink's letter of appointment that it was not within Mr. Fink's power to incur the expenditure required of him without the sanction of the Court, and that he has been doing all he can to collect the necessary funds so as to enable him to comply with the requisition of the Corporation after obtaining the sanction of the Court to his doing so.

For these reasons we make these Rules absolute; the fines if paid will be refunded.

Rules absolute.

30 C. 725(=30 I. A. 130=7 C. W. N. 642=5 Bom. L. R. 469=8 Sar. 470.)

[725] PRIVY COUNCIL.

BALABUX *v.* RUKHMABAI.* [18th March and 29, April, 1903.]

[*On appeal from the Court of the Judicial Commissioner, Hyderabad Assigned Districts.*]

Hindu Law—Partition—Transactions amounting to partition or separation—Reunion—Agreement to reunite—Minor—Presumption when one co-parcener separates himself—Agreement to remain united—Mitakshara Law.

According to the text of Vrihaspati (Mitakshara, Ch. II, s. 9) a reunion in estate properly so called can only take place between persons who were parties to the original partition.

Semble: An agreement to re unite cannot be made on behalf of a person during his minority.

There is no presumption when one co-parcener separates from the others that the latter remain united. Where it is necessary, in order to ascertain the share of the outgoing co-parcener, to fix the shares which the others are,

* *Present*: Lord Davey, Lord Robertson, Sir Andrew Scoble and Sir Arthur Wilson.

(1) (1902) I. L. R. 30 Cal. 593; 7 C. W. N. 390.

1903
MARCH 18.
APRIL 29.

PRIVY COUNCIL.

30 C. 725=30 I. A. 130=7 C. W. N. 642=5 Bom. L. R. 469=8 Sar. 470.

or would be, entitled to, the separation of one may be said to be the virtual separation of all. And an agreement amongst the remaining co-parceners to remain united or to reunite must be proved like any other fact.

In this case, in which the appellant claimed to be entitled on the death of his uncle in 1882 to the property of a joint family by right of survivorship, one of the members had admittedly separated himself in 1869, and no agreement by the other members to remain united or to reunite had been proved, and upon the circumstances of, and evidence in, the suit it was held by the Judicial Committee that the appellant had not sufficiently established the state of jointness between himself and his uncle, which was necessary to make his claim successful; and that even had it been established, transactions in 1889 settled with the appellant's knowledge and consent amounted to a division amongst the members of the family which would defeat his claim.

[Ref. 5 C. L. J. 417; 31 Mad. 482; 26 I. C. 600; 9 O. C. 216; 17 O. C. 285; 10 I. C. 103=10 M. L. T. 529; 31 M. L. J. 472=35 I. C. 52; 59 I. C. 499; 19 A. L. J. 69=22 Cr. L. J. 308=60 I. C. 696; 45 B. 914=23 Bom. L. R. 311=61 I. C. 761; 68 I. C. 833; Fol. 35 Cal. 721; 43 I. C. 833=33 M. L. J. 759; 37 B. 64; 35 B. 293; 49 I. C. 263; 41 All. 361=17 A. L. J. 347=50 I. C. 357; 37 Cal. 703; 40 Cal. 407; 20 I. C. 921; 47 I. C. 716=8 L. W. 400=1918 M. W. N. 680; 26 I. C. 43; Appl. 7 M. L. T. 95=5 I. C. 764; 17 Bom. L. R. 702.]

APPEAL from a decree (4th April 1898) of the Judicial Commissioner, Hyderabad Assigned Districts, reversing a decree. [726] (26th March 1898) of the Civil Judge of the Ellichpur District who had granted the relief prayed for in the appellant's suit.

The plaintiff, Balabux, appealed to His Majesty in Council.

The facts were as follows :—

One Amarchand had four sons—Chatturbhuj, Girdhari Lall, Kanyaram and Ladhuram, who formed a joint Hindu family, Chatturbhuj became separated during his father's lifetime and died about 1869. The present litigation only concerns the other members of the family. Girdhari Lall married Rukhmabai, by whom he had a daughter, Denbai. Kanyaram had a son, Luchminaryan, and Ladhuram married Birjubai and had a son, Balabux, the present plaintiff. Amarchand very many years ago settled in the town of Ellichpur, where he carried on business in the name and style of Amarchand-Girdhari Lall, and he died there about 1858. At his death and up to 1869 his sons, Girdhari Lall, Kanyaram and Ladhuram continued joint. In that year Kanyaram separated and started a separate business of his own in the name of Kanyaram-Luchminarayan. In October 1872 Ladhuram died at Allahabad. His widow, Birjubai, and his son, the plaintiff, then returned to Ellichpur, where they continued to live in the ancestral house, being supported from the profits of the business of Amarchand-Girdhari Lall. The plaintiff was born on 26th March 1869, and was thus 3½ years old at the time of his father's death. Girdhari Lall died about 1882. After his death the business was carried on by his widow, Rukhmabai, and the plaintiff's mother, Birjubai until 1894.

In January 1889 the business was divided into two portions, and two separate shops were started, each with one-half of the assets of the original firm. The new shops were known as Amarchand-Girdhari Lall and Amarchand-Ladhuram. The former was placed under the management of Rukhmabai and the latter under the management of Birjubai.

The main questions raised in this appeal were whether the plaintiff was joint in estate with his uncle, Girdhari Lall, at the death of the latter in 1882; and as to what was the effect of the division of the property in 1889.

About the year 1892 Rukhmabai appointed one Badri Narayan the manager of the share of the business under her control. He

1903 MARCH 18. APRIL 29.

PRIVY COUNCIL.

30 C. 725=30 I. A. 130=7 C. W. N. 642=5 Bom. L. R. 469=8 Sar. 470.

[727] took up a position adverse to the plaintiff and, it was alleged, misappropriated funds. The plaintiff did not interfere much personally in the management of the business ; but on learning the conduct of the manager, he claimed the control of that half of the business : this was resisted, and in 1894 Rukhmabai left the ancestral house and took away with her with the assistance of her brother, Motiram, a safe containing about Rs. 10,000, certain securities, and some jewellery.

Shortly after, on 20th August 1894, the plaintiff instituted the suit out of which the present appeal arose. The plaint alleged that Ladhuram and Girdhari Lall were joint in estate until the death of the former in 1872, and that the plaintiff continued joint with Girdhari Lall until 1882 when Girdhari Lall died ; that on Girdhari Lall's death the plaintiff was a minor and the business was managed by Rukhmabai and Birjubai, and that in consequence of disputes between them, the business was divided in 1889. The plaint challenged the right of Birjubai to make the division, and referred to the mismanagement of the half under Rukhmabai's control ; to the refusal to deliver possession of it to the plaintiff in July 1894 ; and to the removal of the safe, and stated that Motiram was helping Rukhmabai to prevent the plaintiff from obtaining possession of the property, and was in possession of the safe, in consequence of which he was made a defendant. The relief claimed was a declaration that the plaintiff was the owner of the business carried on in the name of Amarchand-Girdhari Lall, and for possession of the assets of the firm, including the safe and its contents, which were in possession of the defendants.

The defence raised the following points :—That up to 1869 Girdhari Lall, Kanyaram, and Ladhuram were undivided and were the joint owners of the business of the firm of Amarchand-Girdhari Lall ; that in 1869 there was a complete separation between the brothers, after the partition Ladhuram starting a shop at Bhorteda in Marwar, nothing being known of his assets, and Girdhari Lall alone then becoming the owner of the business known as Amarchand-Girdhari Lall ; that on Ladhuram's death, in 1872, Girdhari sent for the plaintiff and his mother and supported them ; that before his death Girdhari Lall verbally directed [728] Rukhmabai to give one-half of the property to the plaintiff, and in 1889 she, in pursuance of this request, divided the property and gave one-half of it to the plaintiff ; that the division was final under any circumstances and the suit was barred by limitationt; hat the safe did contain Rs. 10,000 and was removed, but the money did not belong to the firm ; and that even if Girdhari Lall had died joint in estate with Ladhuram and the plaintiff, yet Rukhmabai was entitled to possession of Girdhari Lall's half share by special custom of the Khandebral Marwadees to which caste the parties belonged.

On the pleadings issues were settled, of which the following only are now material :—

(1) Was a partition made between Girdhari Lall and his two brothers in 1869 ?

(2) If so, on what terms, if any, were the plaintiff and his mother taken back into Girdhari Lall's house after Ladhuram's death ? And what is the effect of such union ?

(3) Was the division between plaintiff's mother and defendant No. 1 in 1889 a temporary family arrangement made with the mere object of avoiding domestic quarrels ?

(4) Was the division made without the plaintiff's consent ?

(5) What are the legal consequences of this arrangement, and is the plaintiff at liberty to impeach it ?

1903 MARCH 18. APRIL 29.

PRIVY COUNCIL.

30 C 725=30 I. A. 130=7 C. W. N. 642=5 Bom. L. R. 469=8 Sar. 470.

The Civil Judge of Ellichpur, on the issue as to whether Girdhari Lall and the plaintiff constituted a joint undivided family at the death of the former, decided as follows :—

"Reading the whole mass of evidence together, it appears that there was a partition between Girdhari and his two brothers in 1926 (1869). But it is an admitted fact that soon after the said partition the plaintiff and his mother were brought back to Girdhari's house, and there was union in them some years before Girdhari died, and the reunion continued for some years after Girdhari died ; so the effect of this reunion must be taken as cancelling the first division between them."

He then held that the division of 1889 was not a regular and complete partition, but a family arrangement made without the plaintiff's consent, and which he was at liberty to impeach. He was of opinion that Motiram, the second defendant, was acting in collusion with the first defendant, Rukhmabai, and therefore granted the relief prayed for in the plaint against both defendants.

[729] The Judicial Commissioner held that there was no evidence that there was no division between Girdhari Lall and Ladhuram ; that there was complete partition of all property of every sort in 1869 ; that after this partition Girdhari Lall and Ladhuram agreed to carry on only the trade business of the firm of Amarchand-Girdhari Lall in partnership ; and that Ladhuram died as joint owner of one-half of this business with Girdhari Lall, being separate from him in every other respect. The Judicial Commissioner was also of opinion that the division of 1889 was confined to the business of the firm, and was really a dissolution of partnership between Rukhmabai and Balabux with the full knowledge and consent of the latter. The material portions of his judgment were as follows :—

"The most important question is, whether there ever was a division between Girdhari Lall and Ladhuram. For defendant it is argued and authorities are shown to prove that it has been determined if one out of several brothers (co-parceners) be separated from the rest, it is a virtual separation of all ; and although the remaining brothers continue still to live jointly, they must be considered to have reunited because shares must have been apportioned to all to ascertain the share of the one. Plaintiff then says that after Kanyaram separated, his father and Girdhari Lall reunited. To arrive at a correct decision it is important to consider carefully what happened in January 1889. Now plaintiff never alleged that the division was unequal ; on the contrary, when examined as a witness, he said that to avoid quarrel each took half. Plaintiff got Rs. 55,071 and defendant No. 1 got Rs. 54,333, plus a set-off for a small sum. The evidence of plaintiff's own witness, Juggannath, is very important. It is quite clear from the evidence of witnesses, and from the documentary evidence and books, that there was a very careful partition or division of the debts and assets of the firm into two equal parts, two shares as equal as possible."

After pointing out that the evidence showed this and that it was done with the knowledge and consent of the plaintiff, the judgment continued :—

"That there was no division or partition between plaintiff's father and Girdhari Lall there is no evidence ; if there was a partition it is alleged that they reunited. That this was a fact is not proved. In support of the story of a temporary splitting up of the shop and giving portions into the management of each widow for the benefit of the plaintiff till he should be old enough to look after the business himself, there is no evidence of any value. Long arguments have been made use of, founded on straws, such as the entries of 'Wahipuja' in the books ; but there is ample evidence to prove that a friend or relation or even an outsider may make such entries. Plaintiff relies a good deal on the evidence of his witness, Juggannath, his own agent or servant, who has been obliged to make admissions most damaging to plaintiff's case. It is argued for plaintiff that if there was a division

1903 MARCH 18. APRIL 29.

PRIVY COUNCIL.

30 C. 725=30 I. A. 130=7 C. W. N. 642=5 Bom. L. R. 469=8 Sar. 470.

of 1870-71 (1927) why should there be another division in 1889. This is a point which tells much more in defendant's favour than in plaintiff's. It [730] is admitted that in 1927 Kanyaram separated, and legally there was a partition between all the three brothers in order to find out that Kanyaram's share came to Rs. 11,000. It is argued for plaintiff that the *nakal bahi* for 1927 shows Kanyaram's share separate as Rs. 11,000 and Girdhari Lall's and Ladhuram's joint as Rs. 22,000 and that the fact that there was no division of houses, ornaments, household goods, pots and pans in 1889, proves that there was not a division in 1889. This is a strong argument really for defendant No. 1. The division of the family took place in 1870, and each family obtained its share of the ancestral property, and defendant No. 1 is in possession of the northern half of the house and one shed, and plaintiff is in separate possession of the southern half of the house and one shed, and they lived separate, with their own clothes, ornaments, pots and pans, etc., but were partners in trade, and it was the trade partnership which was dissolved in 1889, each getting half the assets and liabilities of the firm or shop, but there was no personal property, such as ornaments or pots and pans to divide. I do not think that the fact of the funeral obsequies expenses of Ladhuram being debited in the books of the firm prove anything, nor do the arguments about the firm of Amarchand-Ladhuram prove plaintiff's theory. The fact of plaintiff visiting both shops after January 1889, and making some entries in both shops' books after that date, proves nothing. Rukhmabai was his aunt and had not quarrelled then with the boy plaintiff, and plaintiff admits, and his own witness Juggannath says, that he (plaintiff) was learning how to keep shop books, so he might well learn a little by practice in defendant's shop without that making him the owner of the shop. The arguments of undue influence, insufficient knowledge of facts, natural disinclination to resist his mother's wishes, and absence of male friend to represent his interest are all a sort of appeal *ad misericordiam*, but are of no value in support of, or in disproof of, the allegations made by each side regarding what actually took place in 1889, and cannot entitle plaintiff now to repudiate what was done in 1889. The Judge of the Lower Court has fallen into some errors of fact, and I think that the decision arrived at was to a great extent based on the mistake of fact as to the plaintiff's minority, the Lower Court being under the mistaken belief that at the time of the arrangement in 1889 plaintiff was a minor, and that defendant No. 1 was in the position of his guardian. The Lower Court was, I think, also wrong in finding on the evidence and books that the division in 1889 was unequal and unfair. It was, I think, extremely equal and fair. I find that Girdhari Lall and Ladhuram separated in 1870-71 (1927), but then became partners in the firm of Amarchand-Girdhari Lall, Balabux taking the place of his father Ladhuram on Ladhuram's death in 1872 and Rukhmabai (defendant No.1) taking Girdhari Lall's place on the latter's death in 1884. That the firm of Amarchand-Girdhari Lall continued till January 1889 with Rukhmabai and Balabux as the partners and owners; that in January 1889 the firm was dissolved and the partnership ended, each partner taking exactly half of the assets and liabilities as nearly as could be ascertained: and that from January 1889 Rukhmabai became sole owner of the firm of Amarchand-Girdhari Lall, and Balabux became sole owner of the firm of Amarchand-Ladhuram."

The Judicial Commissioner therefore reversed the decree of the Civil Judge, and dismissed the suit with costs.

[731] On this appeal,

J. Jardine K. C. and *L. De Gruyther* for the appellant contended that on the evidence it was proved that Girdhari Lall and Ladhuram were members of a joint undivided family until the death of the latter in 1872. In 1869 Kanyaram had separated from his brothers, but the separation of one member of a joint family did not effect the separation of the remaining members. The presumption was that they remained joint until the contrary was proved. Reference was made to West and Bühler's Hindu Law, 3rd Edition, p. 685; Mayne's Hindu Law, 6th Edition, pp. 653, 773; *Upendra Narain Myti* v. *Gopee Nath Bera* (1), *Sudarsanam Maistri* v. *Narasimhulu Maistri* (2); and as to the effect of one member parting with his share, *Balgobind Das* v. *Narain Lal* (3).

(1) (1883) I. L. R. 9 Cal. 817, 822.
(2) (1901) I. L. R. 25 Mad. 149, 156.
(3) (1893) I. L. R. 15 All. 339; L. R. 20 I. A. 116.

1903
MARCH 18.
APRIL 29.

PRIVY
COUNCIL.

30 C. 725=30 I. A. 130=7 C. W. N. 642=5 Bom. L. R. 469=8 Sar. 470.

Even if it were held that there was a separation between the three brothers in 1869 or 1870, it was submitted that there was a subsequent reunion between Girdhari Lall and the appellant, who, together with his mother, Birjubai, continued to live with Girdhari Lall until his death in 1882. The transaction of 1889 was shown by the evidence to have been merely a family arrangement between Rukhmabai and Birjubai to avoid disputes : there was no proof that that arrangement amounted to a dissolution of partnership between Rukhmabai and the appellant, as had been found by the Judicial Commissioner. Such a case was not disclosed by the pleadings, with which it was inconsistent, and it was, moreover, opposed to the evidence on the record.

R. Obbard for the respondent contended that the judgment of the Judicial Commissioner under appeal was right both as to the consideration of and weight given to the evidence, and also as having applied the correct presumptions and principles of law to the case. The appellant was suing for the possession of property admittedly in the possession of the respondent, and had to prove his title to it. This, it was submitted, he had not done. He had wholly failed to substantiate the material allegations of fact which it was necessary for him to prove to entitle him to a [732] decree in such a case. Both Courts had decided that there was a partition between the three brothers in 1869 or 1870 ; and the evidence to show reunion was quite insufficient to prove that fact. The ascertainment of the share of a member of the family separating himself from the rest necessarily caused separation of a kind amongst the other members. Even if the separation in 1869—70 were considered to be not proved, the arrangement made in 1889 was, it was submitted, a separation on a permanent basis, and was not merely of the temporary character which the appellant attempted to give it. It was a settlement made with his knowledge and consent, and it must be taken to be binding on him, and could not now be set aside. The oral and documentary evidence was gone into at considerable length, and on the whole case it was contended that the judgment of the Judicial Commissioner should be upheld.

Jardine K. C. replied.

The judgment of their Lordships was delivered by

LORD DAVEY. Prior to and in the year 1869 three brothers—Girdhari Lall, Kanyaram and Ladhuram—lived together as an undivided family and owned a shop which had been founded by their father, Amarchand, at Ellichpur, in the Hyderabad Assigned Districts. At some time in 1869 or 1870 (for the date is uncertain) Kanyaram separated from his brothers, took out his share, amounting to about Rs. 11,000, and started a shop of his own. There is no direct evidence of any agreement between Girdhari Lall and Ladhuram. Girdhari Lall's widow, Rukhmabai (who is the first respondent in the present appeal and will hereafter be referred to as the respondent), says she was at Ellichpur at the time of the separation and heard there was a document about their partition and that it had been prepared by a panchayet, but she does not know what has become of that document. And there is no further evidence whether any such document was signed or what were the contents of it, if any such document there were. There is also no evidence that Ladhuram drew out his share of the family property or any part of it, and the fair inference would seem to be that he left it in the family shop, which continued to be carried on by Girdhari [733] Lall under the firm name of Amarchand—Girdhari Lall. About

1903 MARCH 18. APRIL 29.

PRIVY COUNCIL.

30 C. 725=30 I. A. 130=7 C. W. N. 642=5 Bom. L. R. 469=8 Sar. 470.

the time of the partition Ladhuram sent his wife and infant son, the appellant Balabux, to reside in a place referred to as Bhorteda, and a few months afterwards he seems to have joined them there, and they then went together on a pilgrimage to Prayag (Allahabad), where he died in the year 1873. Thereupon Girdhari Lall brought the appellant's mother, Birjubai, and the appellant, then a lad of 13 or 14 years of age, to his residence in Ellichpur, and they lived with him there until his death in 1882. He left one daughter, but no male issue.

After Girdhari Lall's death the two families continued to live together and the two widows managed the shop. Differences arose between the ladies, and in 1889 on the advice of friends the business was divided into two shops, one of which was carried on by the respondent for her own profit, the other being in like manner carried on by Birjubai or herself and the appellant. A complete and apparently exact division was then made of the stock-in-trade, book debts, and other assets of the business, and, according to the respondent, of the houses, the jewels in the house, and the utensils also, but this does not seem to be proved. The parties, however, continued to live in the family house, though whether they messed together is not clear, until 1894 when the final rupture took place and the respondent went to reside elsewhere. The appellant became of age on the 25th March 1887, but he seems to have been more studious of religious observances than of the care of the business, and he did not in fact give much attention to the business at any time, though there are entries in his handwriting in the books before the division in 1889 and even in the respondent's books after the division. It should be mentioned that expenses connected with Ladhuram's funeral ceremonies were paid out of the moneys of the business, and by agreement a sum of Rs. 4,000 was allowed at the time of the division in 1889 for the marriage expenses of Girdhari Lall's daughter.

In the present suit the appellant claims, as the survivor of a joint family, consisting of his uncle Girdhari Lall and himself, to be sole owner of the family shop and business, and treats the division in 1889 as an arrangement for management only to avoid [734] quarrels and as a matter of convenience; and he suggests that it was made by his mother and his aunt before he was perfectly able to understand things.

The respondent's story was that there was a complete separation between the brothers in 1869, and that Ladhuram took out his one-third share and set up a shop of his own at Bhorteda, and the family shop in Ellichpur thereupon became the separate property of Girdhari Lall. She further said that after Ladhuram's death Girdhari Lall out of charity and family affection brought the appellant and his mother to his own house and maintained them, and before his death verbally directed her to give the appellant one-half of the property, which she had done by the division in 1889. There is, however, no evidence that Ladhuram drew out his third share or set up a shop of his own in Bhorteda or elsewhere, and the one fact which is clear in this cloud of uncertainty is that Girdhari Lall in his lifetime never treated himself as the sole owner of the business.

The question for consideration therefore is, what was the nature and legal effect of the transactions which took place in 1869 or 1870 and 1889? The Civil Judge of Ellichpur was of opinion that, reading the whole mass of evidence together, it appeared that there was a partition between Girdhari Lall and his two brothers in 1869, but that

1903
MARCH 18.
APRIL 29.

PRIVY
COUNCIL.

30 C. 725=
30 I. A. 130=
7 C. W. N.
642=5 Bom.
L. R. 469=
8 Sar. 470.

there was union between the present appellant and his mother and Girdhari Lall, some years before the latter died, so the effect of this reunion must be taken as cancelling the first division between them. The learned Judge also held that the division in 1889 was made as a family arrangement only, and without the consent of the appellant, who was therefore at liberty to impeach it. He therefore made a decree in the appellant's favour. Their Lordships are of opinion that the learned Judge's view as to the reunion after the death of Ladhuram cannot be supported, and indeed it was not maintained by the appellant's counsel. A reunion in estate properly so called can only take place between persons who were parties to the original partition. This appears to be the meaning placed on the well known text of Vribaspati (Mitakshara, Ch. 2, Sec. 9) :—" He who being once separated dwells again through affection with his father, brother, or paternal uncle is termed reunited." It is difficult also to see [735] how an agreement for that purpose could have been made by or on behalf of the appellant during his minority.

The Judicial Commissioner also held that Girdhari Lall and Ladhuram separated in 1896 or 1870, but he held that they then became partners in the firm of Amarchand-Girdhari Lall, the appellant taking the place of his father on Ladhuram's death, and the respondent taking Girdhari Lall's place on the latter's death. He further held that the firm of Amarchand-Girdhari Lall was dissolved in January 1889, each partner taking half of the assets and liabilities as nearly as could be ascertained, and from that date the respondent became sole owner of the firm of Amarchand-Girdhari Lall, and the appellant became sole owner of the firm of Amarchand-Ladhuram. By his decree dated the 4th April 1899 (which is the decree under appeal) the Judicial Commissioner accordingly dismissed the appellant's claim with costs in both Courts.

There is therefore a concurrent finding that there was a partition betweeen all three brothers in 1869 or 1870. The Judicial Commissioner's opinion on this point, however, seems to be based more on the legal inference to be drawn in the absence of any direct evidence of the actual agreement between Girdhari Lall and Ladhuram than on a consideration of evidence. Their Lordships, therefore, think it will be more satisfactory for them to state their own reasons for agreeing with the Judicial Commissioner. There is no doubt some evidence both of a continued union between Girdhari Lall and Ladhuram and against it. On the one hand, the absence of any proof of an actual division of property between Girdhari Lall and Ladhuram and the fact of the former having taken the appellant and his mother back to the ancestral home are evidence of the two brothers having agreed to remain united. On the other hand, the fact of Ladhuram having sent his wife and child to reside at Bhorteda and himself leaving the ancestral home (though it is said for a pilgrimage only), and the evident and expressed desire of Girdhari Lall, concurred in by the appellant and his mother until 1894, that the appellant should be treated as entitled to one-half the business and property, is evidence in the contrary direction. But the evidence either way is too slight to form a satisfactory basis for decision. What then [736] is the result? It appears to their Lordships that there is no presumption when one co-parcener separates from the others, that the latter remain united. In many cases it may be necessary, in order to ascertain the share of the outgoing member, to fix the shares which the other co-parceners are or would be entitled to, and in this sense the separation of one is said to be a virtual separation of all. And their

1903 MARCH 18. APRIL 29.

PRIVY COUNCIL.

30 C. 725= 30 I.A. 130= 7 C.W.N. 642 =5 Bom. L. R. 469= 8 Sar. 470.

Lordships think that an agreement amongst the remaining members of a joint family to remain united or to reunite must be proved like any other fact. They agree, therefore, with the Judicial Commissioner on this part of the case, and they think that his inference of a partnership between Girdhari Lall and Ladhuram and afterwards the appellant, either by express agreement or by operation of law, is the hypothesis which best reconciles all the proved facts in the case.

The Judicial Commissioner has very carefully considered and stated the effect of the evidence as to the division in 1889. With the assistance of counsel their Lordships have examined the evidence, both oral and documentary, upon which the learned Commissioner's finding is based, and they agree with him as to the result of it. They need not therefore repeat what he has said. They find that the plaintiff was of age and was present and took an active part in the arrangement then made, and that a careful and exact division was made of the assets and liabilities of the former firm between the two new firms. There is evidence also that the house in which the appellant and respondent resided was divided, the respondent taking the northern portion and the appellant and his mother the southern portion, but it is not quite clear to what period the division should be referred. Their Lordships also think that the Judicial Commissioner was right in not attaching any importance to the fact of the Wahipuja having been performed by the appellant in the respondent's shop or his having visited her shop and even made entries in her books. It appears from other evidence that the appellant and respondent remained on friendly terms until the commencement of the present suit.

Their Lordships therefore are of opinion that the transaction of 1889 was a dissolution of the partnership theretofore subsisting [737] between the appellant and the respondent as heir and representative of Girdhari Lall; and even if they took a different view of what took place in 1869 or 1870, they would hold that the arrangement made in 1889 was not, as alleged by him, of a merely temporary character, but was intended to be a permanent family settlement, and in the circumstances cannot be impeached by, and is binding upon, him.

They will therefore humbly advise His Majesty that the appeal be dismissed, and the appellant will pay the costs of it.

Appeal dismissed.

Solicitors for the appellant: *Hughes & Sons.*
Solicitors for the respondent: *Howard Woolley & Co.*

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30 C. 738 (=5 Bom. L. R. 461=30 I. A. 189=7 C. W. N. 578.)

[738] PRIVY COUNCIL.

BALKISHEN DAS *v.* RAM NARAIN SAHU. *
[24th March and 29th April, 1903.]

[*On appeal from the High Court at Fort William in Bengal.*]

Hindu Law—Partition—Requisites for Partition—Deed defining and allotting shares—Effect on deed of subsequent conduct of the parties—Effect of deed as regards minor members of the joint family—Reunion of member after once separating himself.

* *Present*: Lord Davey, Lord Robertson, Sir Andrew Scoble and Sir Arthur Wilson.